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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/767,322      | 01/29/2004  | Richard L. Giroux    | WEAT/0343           | 5490             |

36735 7590 03/06/2006

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EXAMINER

NEUDER, WILLIAM P

|          |              |
|----------|--------------|
| ART UNIT | PAPER NUMBER |
|----------|--------------|

3672

DATE MAILED: 03/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                               |                               |  |
|------------------------------|-------------------------------|-------------------------------|--|
| <b>Office Action Summary</b> | Application No.<br>10/767,322 | Applicant(s)<br>GIROUX ET AL. |  |
|                              | Examiner<br>William P. Neuder | Art Unit<br>3672              |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 18 January 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1,3-9 and 48-81 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,3-9 and 48-66 is/are allowed.
- 6) ☒ Claim(s) 67-76,78,79 and 81 is/are rejected.
- 7) ☒ Claim(s) 77 and 80 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>1/30/06,2/17/06</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 78 and 79 are rejected under 35 U.S.C. 102(b) as being anticipated by Church et al 2305062.

Church discloses a cementing plug for installation within casing 22. The plug has a body having a bore there through. Gripping means 21 are selectively actuatable for positioning the plug in the wellbore. Valve 2 controls flow through the body. As to claim 79, the gripping members allow movement in one direction and not in the other.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claim 81 is rejected under 35 U.S.C. 103(a) as being unpatentable over Church et al.

The type of valve used would have been considered an obvious design choice since any known valve could be used for the valve of Church.

Claims 67-76 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown 2572309 in view of Rogers et al 6318472.

Brown discloses a method of installing a cementing plug and a cementing plug for installation in a casing 42. Gripping members 39 are selectively actuatable for gripping the casing to prevent movement of the plug in a first axial direction but allow movement of the plug in the opposite direction. Brown is considered to disclose all of the claimed features except for the use of a shearable plug. Plug 21 seals the bore for blocking fluid flow there through. Rogers teaches that it is known to use a shearable means blocking the bore to allow the cement to be pumped out through the plug

following shearing. It would have been considered obvious to provide Brown with a shearable plug in place of plug 21 as taught by Rogers since the use of a shearable means allows better control of the cementing operation. As to claim 68, the plug of Brown is moveable in a first axial direction but not in a second axial direction. As to claim 69, the plug of Brown engages the casing when it moves in a first axial direction and does not engage the casing when it moves in the second axial direction. As to claim 70, the shearable seal member of Rogers is in the form of a rupture disc 184. As to claim 71, the shearable means is shearable by pressure differential. As to claim 72, it would have been considered obvious to provide Brown with castellations as taught by Rogers since the use of castellations provides an anti-rotation means to allow easier drilling out of the plug. As to claim 74, the plug separates the cement from the displacement fluid (see col. 3, lines 38-74). As to claims 75 and 76, the gripping members 39 are expanded along a sloped surface 11.

#### ***Allowable Subject Matter***

Claims 77 and 80 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 1,3-9 and 48-66 are allowed.

#### ***Response to Arguments***

Applicant's arguments filed 1/18/06 have been fully considered but they are not persuasive. First, applicant argues that Church does not disclose a valve in the bore. Clearly Church discloses valve 2 in the bore. Second, applicant argues that it would not

be considered obvious to combine Brown and Rogers because Rogers is not a cementing plug. Rogers clearly is a plug used in a cementing operation it is believed one of ordinary skill in the art would look to all plugs used in cementing operations and not just cementing plugs.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William P. Neuder whose telephone number is 571-272-7032. The examiner can normally be reached on Tuesday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David J. Bagnell can be reached on 571-272-6999. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3672

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



William P Neuder  
Primary Examiner  
Art Unit 3672

W.P.N.